

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )

Amendment of Section 73.202(b) )

Table of Allotments )

FM Broadcast Stations, )

Key Colony Beach, Key Largo and )

Marathon, Florida )

MM Docket No. 93-136

RM-8161

RECEIVED

JUL 26 1993

To: Chief, Allocations Branch

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARYJOINT COMMENTS AND COUNTERPROPOSAL

Okeechobee Broadcasters, Inc. ("OBI"), licensee of WOKC-FM, Indiantown, FL, Sunshine Broadcasting, Inc. ("Sunshine"), licensee of WSUV, Fort Myers Villas, FL, and Jupiter Broadcasting Corporation ("JBC"), permittee of WADY, Jupiter, FL (collectively, "Commenters") by counsel and pursuant to Sections 1.405 and 1.420 of the rules, hereby files their Joint Comments and Counterproposal in MM Docket 93-136, RM 8161. In support whereof, the following is shown.

Spanish Broadcasting System of Florida, Inc. ("SBSF") filed a petition for rule making with the Commission seeking to amend the Table of Allotments as follows:

	Channel No.	
	<u>Present</u>	<u>Proposed</u>
Key Colony Beach	288C2	280C2
Key Largo	280C2	292C2
Marathon	292A	288A

In response to SBSF's petition, the Commission issued a Notice of Proposed Rulemaking, FCC DA 93-532, (released No. of Copies rec'd 993) seeking comments on the proposal.

List ABCDE

Commenters hereby advance a counterproposal to that advanced by SBSF, and request that the Commission amend the FM Table of Allotments as follows:

	Channel No.	
	<u>Present</u>	<u>Proposed</u>
Indiantown <sup>1</sup>	276C2	276C1
Naples	276C3	292C3
Fort Myers Villas	292A	275C2
Clewiston	292A	258A
Jupiter	258A	292C3

and modify the license of WOKC-FM, Indiantown, to specify operation on Channel 276C1, modify the license of WSGL, Naples, to specify operation on Channel 292C3, modify the license of WSUV, Fort Myers Villas, to specify operation on Channel 275C2, modify the license of WAFC-FM, Clewiston, to specify operation on Channel 258A, and modify the permit of WADY, Jupiter, to specify operation on Channel 292C3.

This proposal is not subject to the Commission's "Columbus Policy"<sup>2</sup> concerning changes to existing stations. The Columbus Policy was created to prevent complicated, multi-party channel swaps which might never be consummated because of their complexity and their lack of support by the affected stations. Under the Columbus policy, the Commission has consistently rejected "petitions which involve more than two channel substitutions for

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<sup>1</sup> The community of license of WOKC was changed from Okeechobee to Indiantown, Florida in Docket No. 92-203, RM 8057, effective May 13, 1993. The change in the license of WOKC has not yet been effectuated.

<sup>2</sup> See FM Channel Assignments, 59 RR 2d 1184 (1986).

which consent has not been received, and to accept petitions where all but two parties have consented."<sup>3</sup> In this case, three of the five affected stations are proponents of this counterproposal and a fourth station has provided its signed consent to the change. Therefore, this proposal clearly is in compliance with FCC policy.

Glades Media Company ("Glades"), licensee of WAFC-FM, Clewiston, has given its consent to the change in frequency and transmitter site required by this counterproposal (See Exhibit 1). The Commenters hereby pledge to reimburse Glades for its reasonable expenses involved in changing frequencies and transmitter location.

The Commenters hereby affirm that if the proposed changes to the Table of Allotments are made as proposed, they will promptly file for and build the newly approved facilities.

In adopting the rules for upgrading FM stations<sup>4</sup> the Commission indicated that, in addition to not considering competing expressions of interest to upgrades on adjacent channels, it would also not consider competing expressions of interest where use of the requested higher class channel is incompatible with use of an existing channel.

The Commission "...posited a hypothetical where a Class A licensee on Channel 240A requests an upgrade on Channel 271C2. That licensee also proposes to create the incompatible channel situation by exchanging channels with a licensee operating in another community on Channel 270A. Although Channels 240A and 271C2 are not technically adjacent, Channel 271C2 is not available for

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<sup>3</sup> MO&O, Docket No. 89-172, DA 93-778, released July 8, 1993

<sup>4</sup> Modification of FM Broadcast Licenses to Higher Class Co-channel or Adjacent Channels, 60 RR 2d 114, 120 (1986).

application by others. This is so, because the only channel available to replace Channel 270A elsewhere is Channel 240A and only the petitioner is in position to make Channel 240A available as a substitute."<sup>5</sup>

As the attached Engineering Exhibit shows, the same rational applies with equal force to the case at bar.

The only channel on which WOKC-FM at Indiantown can upgrade is 276C1, which requires:

1. the relocation of WSGL at Naples from Channel 276C3; the only channel that WSGL can move to is Channel 292C3, which requires:
2. that WSUV at Fort Myers Villas move from Channel 292A; the only channel that can be allocated to Fort Myers Villas is 275C2; and
3. that WAFC-FM at Clewiston move from Channel 292A; the only channel that can be allocated to Clewiston is 258A, which in turn requires that:
4. WADY at Jupiter move from Channel 258A; the only channel that can be allocated to Jupiter is 292C3.

As in the Commission's hypothetical noted above, other expressions of interest should not be considered for the Fort Myers Villas or Jupiter channels because the upgraded channels being allocated under this counterproposal are not "available to other parties". Just as with an adjacent channel upgrade, only the licensees at Fort Myers Villas and Jupiter can make use of the

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<sup>5</sup> As cited in MM Docket No. 86-252, Further Notice of Proposed Rulemaking and Order to Show Cause, released October 9, 1987.

proposed higher power channels, by swapping channels, Jupiter with Clewiston and Fort Myers Villas with Naples. Moreover, as the upgrade of WOKC-FM at Indiantown is a co-channel upgrade, competing expressions of interest may not be considered for that channel either.

Exhibit A of the attached Engineering Exhibit shows the distance separations for Channel 276C1 at Indiantown. The allocation is fully spaced except for the allocation of Channel 276 at Naples which short-spacing would be eliminated by allocating a new channel to Naples as proposed herein.

Exhibit B of the Engineering Exhibit shows the distance separations for Channel 292C3 at Naples at its current transmitter site. The proposed allocation is fully spaced except for:

- (a) the allocations of Channel 292A at Fort Myers Villas and at Clewiston, which short-spacing would be eliminated by allocating the new channels to Fort Myers Villas and Clewiston as proposed herein; and
- (b) the proposal advanced by SBSF to allocate Channel 292C2 to Key Largo in place of Channel 280C2, which proposal is mutually exclusive with this counterproposal.

Exhibit C of the Engineering Exhibit shows the distance separations for Channel 275C2 at Fort Myers Villas. The proposed allocation is fully spaced except for the allocation of Channel 276 at Naples which short spacing would be eliminated by allocating a new channel to Naples as proposed herein.

Exhibit D of the Engineering Exhibit shows the distance

separations for Channel 258A at Clewiston at a new transmitter

method of dealing with such interference, if it exists.

**WHEREFORE**, as the requested changes will allow for greatly improved service to the public and new service to 1,339,675 people by upgrading 3 existing stations, while SBSF's proposal will result in no new service to anyone, the parties hereto, believing this counterproposal to be of greater benefit to the listening public, respectfully petition the Commission to adopt the proposed changes to the FM Table of Allotments contained in this Counterproposal.

Respectfully submitted,

**OKEECHOBEE BROADCASTERS, INC.  
SUNSHINE BROADCASTING, INC.  
JUPITER BROADCASTING CORPORATION**

By:

  
Robert V. Rini

Rini & Coran, P.C.  
1350 Connecticut Avenue, N.W.  
Suite 900  
Washington, D.C. 20036  
(202) 296-2007

Date: July 26, 1993

Their Attorney

**Glades Media Company**  
**116 Comercio St.**  
**Clewiston, FL**  
**33440**

**813/983-6106**  
**813/983-5900**

July 23, 1993

Charles Castle, President  
Okeechobee Broadcasters, Inc.  
P.O. Box 1247  
Okeechobee, FL 33472

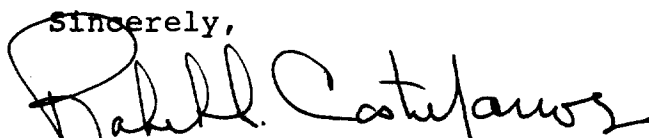
Jerry Bellairs  
Sunshine Broadcasting, Inc.  
1400 Colonial Boulevard  
Fort Myers, FL 33907

Dear Sirs:

This letter is to notify you, and can be used to formally notify the Federal Communications Commission, that Glades Media Company, licensee of WAFC-FM, Clewiston, Florida consents to changing channels from 292A to 258A and moving to a new transmitter site that has equal or greater population coverage, as required by your proposal.

This assumes that Glades Media Company will be compensated for all reasonable expenses related to the move.

Sincerely,



Robert Castellanos, General Partner  
Glades Media Company

**WAFC**



**JAMES M. JOHNSON & ASSOCIATES**  
BROADCAST CONSULTANTS

**EXHIBIT "EE"**  
**ENGINEERING EXHIBIT**  
**SUPPORTING COMMENTS FOR A COUNTERPROPOSAL TO MM DOCKET NO. 93-136**  
**SUMMARY OF COMMENTS**

**JAMES M. JOHNSON & ASSOCIATES**  
BROADCAST CONSULTANTS

**ENGINEERING STATEMENT  
COUNTERPROPOSAL IN DOCKET 93-136**

This Engineering Exhibit has been prepared on behalf of  
Sunshine Broadcasting, Inc. ("Sunshine"), Licensee of WSUV(FM),  
Fort Myers Hills, Florida. Chesapeake Broadcasters, Inc. ("CBI")

Engineering Statement  
Docket No. 93-136  
Page 2

The Naples reference site is the same as the currently authorized C.P. site for WSGL.

Exhibit F is a summary of population data within the 60 dbu contours based on 1990 census data. The Indiantown C2 reference point was used to determine the present WOKC population. The WADY construction permit site was used for the present Jupiter population with a power of 3 kilowatts at 100 meters.

JAMES M. JOHNSON & ASSOCIATES  
BROADCAST CONSULTANTS

Docket No. 93-136 Counterproposal

EXHIBIT "A"  
INDIANTOWN, FLORIDA

REFERENCE

26 56 22 N

80 07 04 W

CLASS C1

Current rules spacings

CHANNEL 276 -103.1 MHz

DISPLAY DATES

DATA 06-30-93

SEARCH 07-22-93

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
AD276	276C2	Indiantown	FL	320.0	37.46	224.0	-186.54 *
DE276	276C2	Indiantown	FL	306.7	51.09	224.0	-172.91 *
AD276	276C2	Indiantown	FL	306.7	51.09	224.0	-172.91 *
DE276	276C2	Okeechobee	FL	306.7	51.09	224.0	-172.91 *
WOKCFM	276C2	Okeechobee	FL	306.8	51.74	224.0	-172.26 *
WOKCFM	276A	Okeechobee	FL	293.4	77.15	200.0	-122.85 *
WSGL.C	276C3	Naples	FL	240.6	183.49	211.0	-27.51 *
WSGL	276A	Naples	FL	240.6	183.50	200.0	-16.50 *
WMXJ	274C	Pompano Beach	FL	184.8	108.19	105.0	3.19
WSHE	278C	Fort Lauderdale	FL	184.8	108.19	105.0	3.19
AD276	276C3	Plantation Key	FL	190.5	215.51	211.0	4.51
WLOQ.C	276C3	Winter Park	FL	323.5	220.43	211.0	9.43
WQOL.C	279C2	Vero Beach	FL	339.1	94.34	79.0	15.34
WFKZ	276A	Plantation Key	FL	190.5	215.51	200.0	15.51
DE276	276A	Plantation Key	FL	190.5	215.51	200.0	15.51
WLOQ	276A	Winter Park	FL	325.9	223.38	200.0	23.38

JAMES M. JOHNSON & ASSOCIATES  
BROADCAST CONSULTANTS

Docket No. 93-136 Counterproposal

EXHIBIT "B"  
NAPLES, FLORIDA

REFERENCE  
26 07 34 N  
81 43 18 W

CLASS C3  
Current rules spacings  
CHANNEL 292 -106.3 MHz

DISPLAY DATES  
DATA 06-30-93  
SEARCH 07-22-19

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
WSUV	292A	Fort Myers Villas	FL	342.5	44.00	142.0	-98.00 *
WAFCFM	292A	Clewiston	FL	51.7	104.40	142.0	-37.60 *
WAFCFM	292A	Clewiston	FL	51.7	104.40	142.0	-37.60 *
AD292	292C2	Key Largo	FL	138.5	173.11	177.0	-3.89 *
DE292	292A	Sarasota	FL	329.0	156.47	142.0	14.47
WSRZFM	292A	Sarasota	FL	327.7	158.66	142.0	16.66
WSRZFM	292A	Sarasota	FL	327.7	158.66	142.0	16.66
WVOJ.C	292A	Avon Park	FL	8.1	160.51	142.0	18.51
WVOJ	292A	Avon Park	FL	8.1	160.51	142.0	18.51
DE292	292A	Avon Park	FL	7.2	164.22	142.0	22.22
WAVK	292A	Marathon	FL	155.9	169.50	142.0	27.50
WAVK.A	292A	Marathon	FL	155.9	169.50	142.0	27.50

JAMES M. JOHNSON & ASSOCIATES  
BROADCAST CONSULTANTS

Docket No. 93-136 Counterproposal

EXHIBIT "C"  
FORT MYERS VILLAS, FLORIDA

REFERENCE	CLASS C2	DISPLAY DATES
26 26 00 N		DATA 06-30-93
82 05 00 W	Current rules spacings	SEARCH 07-22-19
----- CHANNEL 275 -102.9 MHz -----		

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
WSGL.C	276C3	Naples	FL	133.3	49.67	117.0	-67.33 *
WSGL	276A	Naples	FL	133.3	49.63	106.0	-56.37 *
WHPT	273C	Sarasota	FL	351.3	109.29	105.0	4.29
WMXJ	274C	Pompano Beach	FL	105.4	194.33	188.0	6.33
WOKCFM	276A	Okeechobee	FL	55.1	151.71	106.0	45.71
WOKCFM	276C2	Okeechobee	FL	60.5	176.83	130.0	46.83
DE276	276C2	Indiantown	FL	60.7	177.01	130.0	47.01
AD276	276C2	Indiantown	FL	60.7	177.01	130.0	47.01
DE276	276C2	Okeechobee	FL	60.7	177.01	130.0	47.01

JAMES M. JOHNSON & ASSOCIATES  
BROADCAST CONSULTANTS

Docket No. 93-136 Counterproposal

EXHIBIT "D"  
CLEWISTON, FLORIDA

REFERENCE	CLASS A	DISPLAY DATES
26 41 50 N		DATA 06-30-93
80 48 50 W	Current rules spacings	SEARCH 07-22-19
----- CHANNEL 258 - 99.5 MHz -----		

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
WTRU.C	258A	Jupiter	FL	68.8	74.23	115.0	-40.77 *
AP258	258A	Jupiter	FL	69.1	76.85	115.0	-38.15 *
WJBX	257C2	Fort Myers Beach	FL	258.4	105.76	106.0	-0.24 *
WKIS	260C	Boca Raton	FL	140.7	100.84	95.0	5.84
WQYKFM	258C1	St. Petersburg	FL	310.4	213.82	200.0	13.82
WWDO.C	259C2	Vero Beach	FL	16.6	124.84	106.0	18.84
WEDR	256C1	Miami	FL	143.3	101.00	75.0	26.00
WAIL	258C1	Key West	FL	197.9	237.23	200.0	37.23

JAMES M. JOHNSON & ASSOCIATES  
BROADCAST CONSULTANTS

Docket No. 93-136 Counterproposal

EXHIBIT "E"  
JUPITER, FLORIDA

REFERENCE  
26 51 30 N  
80 06 00 W

CLASS C3  
Current rules spacings  
CHANNEL 292 -106.3 MHz

DISPLAY DATES  
DATA 06-30-93  
SEARCH 07-22-93

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
WAFCFM	292A	Clewiston	FL	258.3	81.24	142.0	-60.76 *
WAFCFM	292A	Clewiston	FL	258.3	81.24	142.0	-60.76 *
WJQY	294C	Fort Lauderdale	FL	184.4	96.18	96.0	0.18 <
WAXYFM	290C	Fort Lauderdale	FL	184.4	96.18	96.0	0.18 <
WCIF	292A	Melbourne	FL	340.0	143.83	142.0	1.83 <
WVOJ	292A	Avon Park	FL	299.4	158.44	142.0	16.44
WVOJ.C	292A	Avon Park	FL	299.4	158.44	142.0	16.44
WOVV	238C1	Fort Pierce	FL	315.5	40.97	24.0	16.97
DE292	292A	Avon Park	FL	300.3	162.29	142.0	20.29
WSUV	292A	Fort Myers Villas	FL	257.4	178.91	142.0	36.91
AD292	292C2	Key Largo	FL	192.9	216.22	177.0	39.22



**JAMES M. JOHNSON & ASSOCIATES**  
**BROADCAST CONSULTANTS**

Docket No. 93-136 Counterproposal

**EXHIBIT F**  
**Increase in Population Served**

<u>Call Sign</u>	<u>Community of License</u>	<u>Population within 1mv contour</u>		
		<u>Present</u>	<u>Proposed</u>	<u>Increase</u>
WOKC-FM	Indiantown	454,680	1,179,812	724,932
WSGL	Naples	161,805	161,805	0
WSUV	Fort Myers Villas	249,221	449,373	200,152
WAFC-FM	Clewiston	48,395	50,003	1,608
WADY-CP	Jupiter	212,763	625,746	412,983
TOTAL		1,126,864	2,466,539	1,339,675

AFFIDAVIT

State of Florida       )  
                              )  
County of Highlands    )     SS:

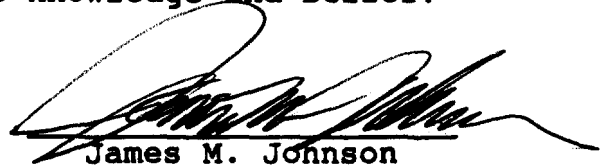
James M. Johnson, having been duly sworn, deposes and says that:

1. He is a Broadcasting Consultant practicing in the City of Sebring, Florida, and his qualifications are a matter of record with the Federal Communications Commission.

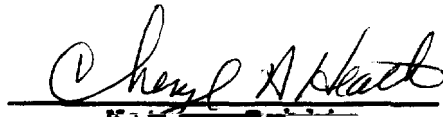
2. He has been retained by Sunshine Broadcasting, Inc. and Okeechobee Broadcasters, Inc., to prepare the attached Engineering Exhibit.

3. He has prepared, or caused to be prepared under his immediate supervision, the accompanying exhibits which are attached to and form part of this affidavit.

4. The foregoing statements and the aforementioned exhibits are true to the best of his knowledge and belief.

  
James M. Johnson

Subscribed and sworn to this 22<sup>nd</sup> day of July, 1993.

  
Cheryl A. Skatch

**CERTIFICATE OF SERVICE**

I, Patricia Moser, an administrator with the law firm of Rini & Coran, do hereby certify that I caused a copy of the foregoing "JOINT COMMENTS AND COUNTERPROPOSAL" to be mailed, first-class, postage prepaid this 26th day of July 1993, to the following:

James M. Weitzman  
Allan G. Moskowitz  
Kaye, Scholer, Fierman, Hays & Handler  
901 15th Street, N.W.  
Suite 1100  
Washington, D.C. 20005

  
\_\_\_\_\_  
Patricia Moser

\*by hand